

**Senator Todd Weiler** proposes the following substitute bill:

**PRESCRIPTION DATABASE REVISIONS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Bradley M. Daw

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**LONG TITLE**

**General Description:**

This bill modifies the Controlled Substance Database Act regarding use of information in the database.

**Highlighted Provisions:**

This bill:

- ▶ provides that a person may request that the division provide to the person his or her records that are in the controlled substance database;
- ▶ provides a procedure for a patient to correct erroneous information in the database;
- ▶ requires law enforcement to use a search warrant to gain database information related to a controlled substance investigation and requires specification of the person regarding whom the information is sought;
- ▶ authorizes a person whose information is in the database to obtain a list of persons who have had access to that person's information, except when the information is subject to an investigation;
- ▶ provides that a physician employed as medical director for a licensed workers' compensation insurer or an approved self-insured employer may have access to the database regarding requests for workers' compensation; and
- ▶ adds the standards of negligently or recklessly to the elements of the criminal



26 offense of unlawfully releasing database information.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **58-37f-203**, as last amended by Laws of Utah 2014, Chapter 72

34 **58-37f-301**, as last amended by Laws of Utah 2014, Chapters 68 and 401

35 **58-37f-601**, as last amended by Laws of Utah 2014, Chapter 68



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **58-37f-203** is amended to read:

39 **58-37f-203. Submission, collection, and maintenance of data.**

40 (1) (a) The pharmacist in charge of the drug outlet where a controlled substance is  
41 dispensed shall submit the data described in this section to the division:

- 42 (i) in accordance with the requirements of this section;
- 43 (ii) in accordance with the procedures established by the division; and
- 44 (iii) in the format established by the division.

45 (b) A dispensing medical practitioner licensed under Chapter 17b, Part 8, Dispensing  
46 Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, shall comply with  
47 the provisions of this section and the dispensing medical practitioner shall assume the duties of  
48 the pharmacist under this chapter.

49 (2) The pharmacist described in Subsection (1) shall, for each controlled substance  
50 dispensed by a pharmacist under the pharmacist's supervision other than those dispensed for an  
51 inpatient at a health care facility, submit to the division the following information:

- 52 (a) the name of the prescribing practitioner;
- 53 (b) the date of the prescription;
- 54 (c) the date the prescription was filled;
- 55 (d) the name of the individual for whom the prescription was written;
- 56 (e) positive identification of the individual receiving the prescription, including the

57 type of identification and any identifying numbers on the identification;

58 (f) the name of the controlled substance;

59 (g) the quantity of the controlled substance prescribed;

60 (h) the strength of the controlled substance;

61 (i) the quantity of the controlled substance dispensed;

62 (j) the dosage quantity and frequency as prescribed;

63 (k) the name of the drug outlet dispensing the controlled substance; and

64 (l) the name of the pharmacist dispensing the controlled substance[~~;~~and].

65 [~~(m) other relevant information as required by division rule.~~]

66 (3) An individual whose records are in the database may obtain those records upon  
67 submission of a written request to the division.

68 (4) (a) A patient whose record is in the database may contact the division in writing to  
69 request correction of any of the patient's database information that is incorrect. The patient  
70 shall provide a postal address for the division's response.

71 (b) The division shall grant or deny the request within 30 days from receipt of the  
72 request and shall advise the requesting patient of its decision by mail postmarked within 35  
73 days of receipt of the request.

74 (c) If the division denies a request under this Subsection (4) or does not respond within  
75 35 days, the patient may submit an appeal to the Department of Commerce, within 60 days  
76 after the postmark date of the patient's letter making a request for a correction under this  
77 Subsection (4).

78 [~~(3)~~] (5) (a) The division shall make rules, in accordance with Title 63G, Chapter 3,  
79 Utah Administrative Rulemaking Act, to establish the electronic format in which the  
80 information required under this section shall be submitted to the division.

81 (b) The division shall ensure that the database system records and maintains for  
82 reference:

83 (i) the identification of each individual who requests or receives information from the  
84 database;

85 (ii) the information provided to each individual; and

86 (iii) the date and time that the information is requested or provided.

87 Section 2. Section **58-37f-301** is amended to read:

88           **58-37f-301. Access to database.**

89           (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
90 Administrative Rulemaking Act, to:

91           (a) effectively enforce the limitations on access to the database as described in this  
92 part; and

93           (b) establish standards and procedures to ensure accurate identification of individuals  
94 requesting information or receiving information without request from the database.

95           (2) The division shall make information in the database and information obtained from  
96 other state or federal prescription monitoring programs by means of the database available only  
97 to the following individuals, in accordance with the requirements of this chapter and division  
98 rules:

99           (a) personnel of the division specifically assigned to conduct investigations related to  
100 controlled substance laws under the jurisdiction of the division;

101           (b) authorized division personnel engaged in analysis of controlled substance  
102 prescription information as a part of the assigned duties and responsibilities of their  
103 employment;

104           (c) in accordance with a written agreement entered into with the department,  
105 employees of the Department of Health:

106           (i) whom the director of the Department of Health assigns to conduct scientific studies  
107 regarding the use or abuse of controlled substances, if the identity of the individuals and  
108 pharmacies in the database are confidential and are not disclosed in any manner to any  
109 individual who is not directly involved in the scientific studies; or

110           (ii) when the information is requested by the Department of Health in relation to a  
111 person or provider whom the Department of Health suspects may be improperly obtaining or  
112 providing a controlled substance;

113           (d) in accordance with a written agreement entered into with the department, a  
114 designee of the director of the Department of Health, who is not an employee of the  
115 Department of Health, whom the director of the Department of Health assigns to conduct  
116 scientific studies regarding the use or abuse of controlled substances pursuant to an application  
117 process established in rule by the Department of Health, if:

118           (i) the designee provides explicit information to the Department of Health regarding

119 the purpose of the scientific studies;

120 (ii) the scientific studies to be conducted by the designee:

121 (A) fit within the responsibilities of the Department of Health for health and welfare;

122 (B) are reviewed and approved by an Institutional Review Board that is approved for

123 human subject research by the United States Department of Health and Human Services; and

124 (C) are not conducted for profit or commercial gain; and

125 (D) are conducted in a research facility, as defined by division rule, that is associated

126 with a university or college in the state accredited by the Northwest Commission on Colleges

127 and Universities;

128 (iii) the designee protects the information as a business associate of the Department of

129 Health; and

130 (iv) the identity of the prescribers, patients, and pharmacies in the database are

131 de-identified, confidential, not disclosed in any manner to the designee or to any individual

132 who is not directly involved in the scientific studies;

133 (e) in accordance with the written agreement entered into with the department and the

134 Department of Health, authorized employees of a managed care organization, as defined in 42

135 C.F.R. Sec. 438, if:

136 (i) the managed care organization contracts with the Department of Health under the

137 provisions of Section [26-18-405](#) and the contract includes provisions that:

138 (A) require a managed care organization employee who will have access to information

139 from the database to submit to a criminal background check; and

140 (B) limit the authorized employee of the managed care organization to requesting either

141 the division or the Department of Health to conduct a search of the database regarding a

142 specific Medicaid enrollee and to report the results of the search to the authorized employee;

143 and

144 (ii) the information is requested by an authorized employee of the managed care

145 organization in relation to a person who is enrolled in the Medicaid program with the managed

146 care organization, and the managed care organization suspects the person may be improperly

147 obtaining or providing a controlled substance;

148 (f) a licensed practitioner having authority to prescribe controlled substances, to the

149 extent the information:

150 (i) (A) relates specifically to a current or prospective patient of the practitioner; and  
151 (B) is provided to or sought by the practitioner for the purpose of:  
152 (I) prescribing or considering prescribing any controlled substance to the current or  
153 prospective patient;  
154 (II) diagnosing the current or prospective patient;  
155 (III) providing medical treatment or medical advice to the current or prospective  
156 patient; or  
157 (IV) determining whether the current or prospective patient:  
158 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;  
159 or  
160 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled  
161 substance from the practitioner;  
162 (ii) (A) relates specifically to a former patient of the practitioner; and  
163 (B) is provided to or sought by the practitioner for the purpose of determining whether  
164 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a  
165 controlled substance from the practitioner;  
166 (iii) relates specifically to an individual who has access to the practitioner's Drug  
167 Enforcement Administration identification number, and the practitioner suspects that the  
168 individual may have used the practitioner's Drug Enforcement Administration identification  
169 number to fraudulently acquire or prescribe a controlled substance;  
170 (iv) relates to the practitioner's own prescribing practices, except when specifically  
171 prohibited by the division by administrative rule;  
172 (v) relates to the use of the controlled substance database by an employee of the  
173 practitioner, described in Subsection (2)(g); or  
174 (vi) relates to any use of the practitioner's Drug Enforcement Administration  
175 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a  
176 controlled substance;  
177 (g) in accordance with Subsection (3)(a), an employee of a practitioner described in  
178 Subsection (2)(f), for a purpose described in Subsection (2)(f)(i) or (ii), if:  
179 (i) the employee is designated by the practitioner as an individual authorized to access  
180 the information on behalf of the practitioner;

- 181 (ii) the practitioner provides written notice to the division of the identity of the
- 182 employee; and
- 183 (iii) the division:
  - 184 (A) grants the employee access to the database; and
  - 185 (B) provides the employee with a password that is unique to that employee to access
  - 186 the database in order to permit the division to comply with the requirements of Subsection
  - 187 [58-37f-203](#)~~(3)~~(4)(b) with respect to the employee;
- 188 (h) an employee of the same business that employs a licensed practitioner under
- 189 Subsection (2)(f) if:
  - 190 (i) the employee is designated by the practitioner as an individual authorized to access
  - 191 the information on behalf of the practitioner;
  - 192 (ii) the practitioner and the employing business provide written notice to the division of
  - 193 the identity of the designated employee; and
  - 194 (iii) the division:
    - 195 (A) grants the employee access to the database; and
    - 196 (B) provides the employee with a password that is unique to that employee to access
    - 197 the database in order to permit the division to comply with the requirements of Subsection
    - 198 [58-37f-203](#)~~(3)~~(4)(b) with respect to the employee;
  - 199 (i) a licensed pharmacist having authority to dispense a controlled substance to the
  - 200 extent the information is provided or sought for the purpose of:
    - 201 (i) dispensing or considering dispensing any controlled substance; or
    - 202 (ii) determining whether a person:
      - 203 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
      - 204 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
      - 205 substance from the pharmacist;
    - 206 (j) in accordance with Subsection (3)(a), a licensed pharmacy technician who is an
    - 207 employee of a pharmacy as defined in Section [58-17b-102](#), for the purposes described in
    - 208 Subsection (2)(h)(i) or (ii), if:
      - 209 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
      - 210 to access the information on behalf of a licensed pharmacist employed by the pharmacy;
      - 211 (ii) the pharmacist-in-charge provides written notice to the division of the identity of

212 the employee; and

213 (iii) the division:

214 (A) grants the employee access to the database; and

215 (B) provides the employee with a password that is unique to that employee to access

216 the database in order to permit the division to comply with the requirements of Subsection

217 ~~58-37f-203(3)~~(4)(b) with respect to the employee;

218 (k) pursuant to a valid search warrant, federal, state, and local law enforcement

219 [~~authorities,~~] agencies and state and local prosecutors[;] that are engaged [~~as a specified duty of~~

220 ~~their employment in enforcing laws:~~] in an investigation related to:

221 (i) one or more controlled substances; and

222 (ii) a specific person who is a subject of the investigation;

223 [~~(i) regulating controlled substances;~~]

224 [~~(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; or]~~

225 [~~(iii) providing information about a criminal defendant to defense counsel, upon~~

226 ~~request during the discovery process, for the purpose of establishing a defense in a criminal~~

227 ~~case;]~~

228 (l) employees of the Office of Internal Audit and Program Integrity within the

229 Department of Health who are engaged in their specified duty of ensuring Medicaid program

230 integrity under Section ~~26-18-2.3~~;

231 (m) a mental health therapist, if:

232 (i) the information relates to a patient who is:

233 (A) enrolled in a licensed substance abuse treatment program; and

234 (B) receiving treatment from, or under the direction of, the mental health therapist as

235 part of the patient's participation in the licensed substance abuse treatment program described

236 in Subsection (2)(m)(i)(A);

237 (ii) the information is sought for the purpose of determining whether the patient is

238 using a controlled substance while the patient is enrolled in the licensed substance abuse

239 treatment program described in Subsection (2)(m)(i)(A); and

240 (iii) the licensed substance abuse treatment program described in Subsection

241 (2)(m)(i)(A) is associated with a practitioner who:

242 (A) is a physician, a physician assistant, an advance practice registered nurse, or a

243 pharmacist; and

244 (B) is available to consult with the mental health therapist regarding the information  
245 obtained by the mental health therapist, under this Subsection (2)(m), from the database;

246 (n) an individual who is the recipient of a controlled substance prescription entered into  
247 the database, upon providing evidence satisfactory to the division that the individual requesting  
248 the information is in fact the individual about whom the data entry was made;

249 (o) an individual under Subsection (2)(n) for the purpose of obtaining a list of the  
250 persons and entities that have requested or received any information from the database  
251 regarding the individual, except if the individual's record is subject to a pending or current  
252 investigation as authorized under this Subsection (2);

253 ~~[(o)]~~ (p) the inspector general, or a designee of the inspector general, of the Office of  
254 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in  
255 Title 63A, Chapter 13, Part 2, Office and Powers; and

256 ~~[(p)]~~ (q) the following licensed physicians for the purpose of reviewing and offering an  
257 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter  
258 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

259 (i) a member of the medical panel described in Section 34A-2-601; or

260 (ii) a physician employed as medical director for a licensed workers' compensation  
261 insurer or an approved self-insured employer; or

262 ~~[(ii)]~~ (iii) a physician offering a second opinion regarding treatment.

263 (3) (a) (i) A practitioner described in Subsection (2)(f) may designate up to three  
264 employees to access information from the database under Subsection (2)(g), (2)(h), or (4)(c).

265 (ii) A pharmacist described in Subsection (2)(i) who is a pharmacist-in-charge may  
266 designate up to three employees to access information from the database under Subsection  
267 (2)(j).

268 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
269 Administrative Rulemaking Act, to:

270 (i) establish background check procedures to determine whether an employee  
271 designated under Subsection (2)(g), (2)(h), or (4)(c) should be granted access to the database;  
272 and

273 (ii) establish the information to be provided by an emergency room employee under

274 Subsection (4).

275 (c) The division shall grant an employee designated under Subsection (2)(g), (2)(h), or  
276 (4)(c) access to the database, unless the division determines, based on a background check, that  
277 the employee poses a security risk to the information contained in the database.

278 (4) (a) An individual who is employed in the emergency room of a hospital may  
279 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if  
280 the individual is designated under Subsection (4)(c) and the licensed practitioner:

281 (i) is employed in the emergency room;

282 (ii) is treating an emergency room patient for an emergency medical condition; and

283 (iii) requests that an individual employed in the emergency room and designated under  
284 Subsection (4)(c) obtain information regarding the patient from the database as needed in the  
285 course of treatment.

286 (b) The emergency room employee obtaining information from the database shall,  
287 when gaining access to the database, provide to the database the name and any additional  
288 identifiers regarding the requesting practitioner as required by division administrative rule  
289 established under Subsection (3)(b).

290 (c) An individual employed in the emergency room under this Subsection (4) may  
291 obtain information from the database as provided in Subsection (4)(a) if:

292 (i) the employee is designated by the practitioner as an individual authorized to access  
293 the information on behalf of the practitioner;

294 (ii) the practitioner and the hospital operating the emergency room provide written  
295 notice to the division of the identity of the designated employee; and

296 (iii) the division:

297 (A) grants the employee access to the database; and

298 (B) provides the employee with a password that is unique to that employee to access  
299 the database in order to permit the division to comply with the requirements of Subsection  
300 [58-37f-203\(3\)\(b\)](#) with respect to the employee.

301 (d) The division may impose a fee, in accordance with Section [63J-1-504](#), on a  
302 practitioner who designates an employee under Subsection (2)(g), (2)(h), or (4)(c) to pay for the  
303 costs incurred by the division to conduct the background check and make the determination  
304 described in Subsection (3)(b).

305 (5) (a) An individual who is granted access to the database based on the fact that the  
306 individual is a licensed practitioner or a mental health therapist shall be denied access to the  
307 database when the individual is no longer licensed.

308 (b) An individual who is granted access to the database based on the fact that the  
309 individual is a designated employee of a licensed practitioner shall be denied access to the  
310 database when the practitioner is no longer licensed.

311 Section 3. Section **58-37f-601** is amended to read:

312 **58-37f-601. Unlawful release or use of database information -- Criminal and civil**  
313 **penalties.**

314 (1) (a) Any person who knowingly and intentionally releases any information in the  
315 database or [~~knowingly and intentionally releases~~] any information obtained from other state or  
316 federal prescription monitoring programs by means of the database in violation of the  
317 limitations under Part 3, Access, is guilty of a third degree felony.

318 (b) Any person who negligently or recklessly releases any information in the database  
319 or any information obtained from other state or federal prescription monitoring programs by  
320 means of the database in violation of the limitations under Title 58, Chapter 37f, Part 3,  
321 Access, is guilty of a class C misdemeanor.

322 (2) (a) Any person who obtains or attempts to obtain information from the database or  
323 from any other state or federal prescription monitoring programs by means of the database by  
324 misrepresentation or fraud is guilty of a third degree felony.

325 (b) Any person who obtains or attempts to obtain information from the database for a  
326 purpose other than a purpose authorized by this chapter or by rule is guilty of a third degree  
327 felony.

328 (3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and  
329 intentionally use, release, publish, or otherwise make available to any other person any  
330 information obtained from the database or from any other state or federal prescription  
331 monitoring programs by means of the database for any purpose other than those specified in  
332 Part 3, Access.

333 (b) Each separate violation of this Subsection (3) is a third degree felony and is also  
334 subject to a civil penalty not to exceed \$5,000.

335 (c) The procedure for determining a civil violation of this Subsection (3) is in

336 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

337 (d) Civil penalties assessed under this Subsection (3) shall be deposited in the General  
338 Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

339 (e) This Subsection (3) does not prohibit a person who obtains information from the  
340 database under Subsection 58-37f-301(2)(f), (g), (i), or (4)(c) from:

341 (i) including the information in the person's medical chart or file for access by a person  
342 authorized to review the medical chart or file; or

343 (ii) providing the information to a person in accordance with the requirements of the  
344 Health Insurance Portability and Accountability Act of 1996.